

Emergency Bill No. 18-01  
Concerning: Massage Businesses -  
Licensing  
Revised: 7-19-01 Draft No. 5  
Introduced: May 15, 2001  
Enacted: July 24, 2001  
Executive: August 1, 2001  
Effective: August 1, 2001  
Sunset Date: None  
Ch. 18, Laws of Mont. Co. 2001

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the County Executive

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### AN EMERGENCY ACT to:

- (1) require certain persons who do not hold a state massage therapists' certificate or massage practitioners' registration to obtain a County massage worker's license [[under certain circumstances]];
- (2) require certain businesses [[that provide massages and do not employ only state-certified massage therapists or registered massage practitioners]] to obtain a County license for a [[']]massage establishment[[']], and require the manager of each massage establishment to obtain a manager's license; and
- (3) generally regulate the practice of massage [[by people who are not state certified]] in the County to the extent it is not regulated by state law.

By amending

Montgomery County Code  
Chapter 24, Health and Sanitation  
Section 24-11

|                              |  |
|------------------------------|--|
| <b>Boldface</b>              | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>           | <i>Added to existing law by original bill.</i>             |
| [Single boldface brackets]   | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>    | <i>Added by amendment.</i>                                 |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * *                        | <i>Existing law unaffected by bill.</i>                    |

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Section 24-11 is amended as follows:**

**24-11. Massage.**

(a) **Definitions.** In this Section, terms that are defined in the state Health Occupations Article have the same meaning, and the following words and phrases have the following meanings [indicated]:

(1) Massage [means the external manipulation of the soft tissues of the human body for purposes of relaxation or stress reduction. Massage does not include any activity for which a license is required under State law, including the use of spinal or joint manipulation, mobilization, therapeutic exercise, ultrasound, radiant heat, or electrical stimulation] has the same meaning as “massage therapy” under §3-5A-01 of the Health Occupations Article.

(2) Massage establishment [means]: any business [[that provides, allows a person on its premises to provide, or directs or refers a person elsewhere to provide, massage for compensation either directly or indirectly:]

[[ (A) i. at [the] a business location in the County; or ]]

[(B)] [[ii. at any other location in the County; and ]]

[[ (B) whose employees, agents, or contractors perform massage and who are not certified massage therapists or registered massage practitioners ]] where any employee, agent, or contractor who is not a certified massage therapist or registered massage practitioner under state law performs a massage.

(3) Director [means]: the Director of the Department of Health and Human Services, or the Director's designee.

(4) Board: the Maryland State Board of Chiropractic Examiners.

(5) Department: the Department of Health and Human Services.

[(6) Massage establishment manager: an individual who acts as the manager of a massage establishment.]]

[(7) Massage establishment worker: an individual, not exempted under subsection (b), who administers massages to other individuals.]]

(b) **Scope.** This Section does not apply to:

(1) an individual with a license, registration, or other approval issued by the Board to provide massage under §3-5A-05 of the Health Occupations Article[.];

(2) an athletic trainer who:

(A) is certified by a nationally recognized athletic trainer certification agency identified by the Director and works under the supervision of a physician, while functioning in [[the course of]] the athletic trainer's professional capacity;

(B) is employed by an accredited educational institution, while performing professional duties at that institution; or

(C) is employed by a professional sports team, while treating members of that team; and[.]]

(3) a [[massage establishment]] business in which every person who performs massage is a certified massage therapist or registered massage practitioner under State law.

[(b)] (c) **Massage establishment[[s]].**

- (1) (A) Any ~~[[person who operates a]]~~ massage establishment ~~[in the County]~~ must ~~[obtain an annual]~~ have a license ~~[from the Director]~~ issued by the Director under this Section. The licensee is the owner of the establishment. If the owner is not an individual, the owner must designate on the application an individual as the owner's representative. The owner's representative must consent on the application to be so designated. The representative must accept any notice sent to the owner under this Section. If the owner does not pay any fine, penalty, or fee due under this Section, the Director may collect the fine, penalty, or fee from the owner's representative. The owner must not designate an individual as its representative under this subsection if the individual is not qualified to receive a manager's license under subsection (d).
- (B) The ~~[[massage establishment must have the]]~~ licensee or a licensed manager must be on the premises at all times while the establishment is occupied.
- (C) A person must not own or operate a massage establishment without obtaining a massage establishment license. This requirement may be enforced by the Director or the Police Department.
- (D) The Director or the Police Department may close ~~[[the business operating as]]~~ an unlicensed massage establishment until the business and each person owning or operating the business obtains a license under this Section.

- (2) Except as otherwise provided in this Section, the Director must, with the assistance of the Police Department, review each application and issue a massage establishment license if:
- (A) the applicant meets the requirements of this Section, is qualified under standards set by Executive Regulation [[under method (2)], and completes a license application form provided by the Director;
  - (B) the massage establishment facility meets minimum standards set by Executive Regulation [[under method (2)]; [and]
  - (C) the applicant pays [a] an application fee and license fee[.]; and
  - (D) the establishment complies with all applicable zoning, health, fire prevention, and building laws and regulations.
- (3) The Director must conduct a preclicensing inspection of any massage establishment, and [such] may conduct other inspections [as required by regulation] necessary to enforce this Section.
- (4) A massage establishment must meet minimum standards set by regulation at all times.
- (5) Any person who operates a massage establishment [[as owner or manager]] must not [compensate another person for performing] perform or allow another person to perform a massage [in the County] unless [[that]] the person who performs the massage: [[has a valid County Massage]] [Practitioner or Technician registration certificate] [[establishment worker's license]]
- (A) is a certified massage therapist or registered massage practitioner under state law; or

- 105                    (B) has a valid County massage worker's license.
- 106            (6) Any person who operates a massage establishment [[as owner or  
 107                    manager]] [in the County] must permit a County police officer or  
 108                    the Director [or Director's designee] to enter the massage  
 109                    establishment at any time during operating hours, and at any  
 110                    other time in an emergency [that endangers health or life] or  
 111                    when the establishment is occupied.
- 112            (7) Any person who operates a massage establishment [[as owner or  
 113                    manager]] must not allow a person of one gender to massage a  
 114                    person of another gender. This [[paragraph]] restriction does not  
 115                    apply if the person who performs the massage is a State-certified  
 116                    massage therapist or registered massage practitioner.
- 117            (8) A massage establishment license has a term of one year and  
 118                    must be renewed annually.
- 119            (9) (A) A massage establishment license must not be transferred  
 120                    from one person to another.
- 121                    (B) A massage establishment license must not be transferred  
 122                    from a location to another location [[without the Director's  
 123                    prior written approval]] until a license is issued for the new  
 124                    location.
- 125                    (C) A massage establishment license applies to a single  
 126                    location specified in the license.
- 127            (10) If an applicant for a massage establishment license does not own  
 128                    the building where the establishment would be located, the  
 129                    building owner must approve the use of the building as a massage  
 130                    establishment on a form provided by the Director.
- 131            (d) **[[People managing massage establishments]]** **Massage**

**establishment manager.**

- (1) [[Any]] The licensee, if an individual, and any person who manages a massage establishment in the absence of the licensee, including an owner's representative designated under subsection (c)(1)(A), must obtain a massage establishment manager's license from the Director and renew the license each year.
- (2) Except as otherwise provided in this Section, the Director must, with the assistance of the Police Department, review each application and issue a license if the applicant is qualified under this Section and the standards established by regulation. Each applicant must:
- (A) complete an application form provided by the Director;
  - (B) submit proof of good health required by the Director;
  - (C) pay the application and license fee;
  - (D) be at least 18 years old;
  - (E) have not been convicted of, pled guilty or nolo contendere to, or served any term of probation as a result of being charged with:
    - (i) a felony;
    - (ii) a crime involving moral turpitude;
    - (iii) violation of a controlled dangerous substances law;
    - or
    - (iv) violation of any law regulating the practice of a health occupation; [[and]]
  - (F) not habitually use any drug or alcoholic beverage to an extent that impairs professional performance;

(G) provide a passport-size photograph, fingerprints, and a list of the applicant's occupation or employment for the 3 years before filing the application; and

(H) if the applicant is not a United States citizen, provide evidence of legal presence and employability in the United States.

[(c)] (e) **Massage [Practitioners and Technicians] worker.**

(1) Any person who performs [a] massage [for compensation in the County] for compensation and who is not a [[massage establishment worker,]] certified massage therapist[[,]] or registered massage practitioner under state law must[[:]

[[A)] obtain [an annual] a massage [[establishment]] worker's license [registration certificate] from the Director and renew the license each year[; and

(B) provide massage only to persons of the massage worker's same gender]]. An individual may apply for a license under this subsection only if the individual is expressly exempt under §3-5A-05(a)(2) of the Health Occupations Article from the certification and registration requirements of that section.

(2) Except as otherwise provided in this Section, the Director must, with the assistance of the Police Department, review each application and issue a license if the applicant is qualified under this Section and the standards established by regulation. Each applicant must:

(A) complete an application form provided by the Director;

(B) submit proof of good health;



- 185 (C) pay the application and license fee;
- 186 (D) be at least 18 years old;
- 187 (E) have satisfactorily completed at least 60 credit hours of
- 188 education at an institution of higher education as defined
- 189 by State law;
- 190 (F) have successfully completed at least 500 hours of massage
- 191 training provided by an organization approved by the
- 192 Board; and
- 193 (G) have not been convicted of, pled guilty or nolo contendere
- 194 to, or served any term of probation as a result of being
- 195 charged with:
  - 196 (i) a felony;
  - 197 (ii) a crime involving moral turpitude;
  - 198 (iii) violation of a controlled dangerous substances law; or
  - 199 (iv) violation of any law regulating the practice of a health
  - 200 occupation;
- 201 (H) not habitually use any drug or alcoholic beverage to an
- 202 extent that impairs professional performance;
- 203 (I) provide a passport size photograph, fingerprints, and a list
- 204 of the applicant's occupation or employment for the 3 years
- 205 before filing the application; and
- 206 (J) If the applicant is not a United States citizen, provide
- 207 evidence of legal presence and legal employability in the
- 208 United States.

209 [(2) Except as otherwise provided in this Section, the Director must

210 issue a Massage Practitioner registration certificate if the

211 applicant:

(A) completes a registration form provided by the Director;

(B) submits proof of good health;

(C) pays a registration fee;

(D) has either:

(i) successfully completed at least 500 hours of  
massage training provided by an organization  
approved by any state of the United States or the  
District of Columbia; or

(ii) passed an examination of massage knowledge and  
skill approved by any state of the United States or  
the District of Columbia.]

[(3) Except as otherwise provided in this Section, the Director must  
issue a Massage Technician registration certificate if the  
applicant:

(A) completes a registration form provided by the Director;

(B) submits proof of good health; and

(C) pays a registration fee.]

[(4)] (3) A person who holds a license issued under this Section and  
who is not a certified massage therapist or registered massage  
practitioner [or Technician] under state law must not perform [a]  
massage [in the County for compensation] except as the agent or  
employee of a massage establishment [with] that has a valid  
County license.

(4) A massage worker licensed under this subsection must only  
massage persons of the worker's same gender.

(5) A massage [[establishment]] worker's license must not be  
transferred from one individual to another.

239 [(d)] (f) Fees. The County Executive must set application and license [and  
 240 registration] fees by Executive Regulation under method [(2)] (3) that  
 241 substantially cover the cost of administering this Section.

242 [(e)] (g) Denial or Revocation of license [or registration]. The Director may  
 243 refuse to issue a license [or registration certificate] under this Section,  
 244 and may suspend or revoke a license [or registration certificate] issued  
 245 under this Section, after a hearing for which reasonable notice has been  
 246 given, if the licensee[[, registrant,]] or applicant:

- 247 (1) violates any provision of this Section;
- 248 (2) submits fraudulent information in support of a license [or  
 249 registration] application under this Section;
- 250 (3) is convicted of, or pleads guilty or nolo contendere to, or is  
 251 ordered to serve a period of probation after being charged with:
  - 252 (A) a felony;
  - 253 (B) a crime involving moral turpitude;
  - 254 (C) violation of a controlled dangerous substances law; or
  - 255 (D) violation of any law regulating the practice of a health  
 256 occupation;
- 257 (4) habitually uses any drug or alcoholic beverage to an extent that  
 258 impairs professional performance; or
- 259 (5) is grossly negligent in the performance of massage.

260 [Any person aggrieved by the Director's order under this subsection  
 261 may appeal to the County Board of Appeals within 10 days after  
 262 receiving the order. The filing of an appeal does not stay the  
 263 Director's order unless specifically provided in the order.]

264 (h) Notice and opportunity for hearing.

- (1) Notice. After [[determining]] finding that one or more grounds for denial, suspension, or revocation of a license could exist, the Director may serve a written notice on the licensee or applicant in person or by regular mail, postage prepaid, addressed to the person's last known address as maintained in the Director's file. Service on that person by mail is effective 3 days after mailing. The Director must also post a written notice at a conspicuous place on the establishment for which the license was or would be issued. The written notice must, at a minimum[[,]]:
- [[i]] (A) state that the Director has found that the licensee or applicant may be subject to denial, suspension, or revocation;
- [[ii]] (B) identify the specific grounds for the Director's finding; and
- [[iii]] (C) set a date for a hearing on denial of the application or suspension or revocation of the license. The [[date of the]] hearing must be held at least 5 days after service of the Director's notice, unless the parties agree to an earlier date.
- (2) Hearing. The Director or a designee may conduct the hearing. At the hearing, the licensee or applicant may present evidence and witnesses to refute the grounds cited by the Director for denying the application or suspending or revoking the license, and the County and any other person may submit relevant evidence. The relevant records of the Department are part of the hearing record. Within 3 days after the hearing closes, the person conducting the hearing must render a decision in writing, giving the reasons for the decision. That decision is final and is subject

to judicial review under the Maryland rules for review of administrative decisions.

- (3) Failure to appear. A licensee or applicant who after notice does not appear at a hearing waives the right to a hearing and consents to the action that the Director proposed in the notice. The Director may deny the application or suspend or revoke the license as proposed in the notice.
- (4) Notice and Effective Date of Suspension or Revocation. The Director's written decision must be posted at the office of the Director and must be served on the licensee or applicant in person or by regular mail, postage prepaid, addressed to [[that person's]] the applicant or licensee's last known address as maintained in the Department's files. The Director must also post a written notice of the decision at a conspicuous place on the establishment for which the license was or would be issued. A suspension or revocation takes effect on the day the Director's decision is delivered in person or posted, whichever occurs first [[or 3 days after it is mailed]]. To facilitate enforcement of this provision, the Director may require the [[person]] applicant or licensee to [[come to]] appear at the Director's office at a specific time to receive a copy of the decision and be prepared to surrender the license. If a licensee or applicant does not appear to receive the Director's decision, the Director's decision is effective on the date and time the licensee or applicant was directed to appear.
- (5) Surrender of license and security. [[Upon the suspension or revocation of]] When a license is suspended or revoked, the Director must take custody of the suspended or revoked license.

(i) Upon receipt of notice of a license revocation or suspension, unless otherwise directed[[,]] the licensee must, within 24 hours:

(1) place the license in the mail, postage prepaid, addressed to the Department; or

(2) physically deliver the license to the Department.

(j) If the Department does not receive [[the]] a suspended or revoked license within 48 hours after notification, excluding weekends or a legal holiday, or as otherwise directed, the holder of the license violates this Section. [[and, in]] In addition to any other penalties that may be imposed, the director or Police may:

(1) remove the revoked or suspended license from the business location; and

(2) close the place of business until the person operating the business obtains a license.

**(k) Appeals.**

(1) Any person aggrieved by the denial, suspension, or revocation of any license under this Section may seek judicial review under the Maryland [[Rules of Procedure]] rules for review of administrative decisions.

(2) The Director's decision to deny a license must not be stayed pending appeal. Final administrative action that revokes or suspends a license may be stayed pending appeal only if:

(A) the court finds that the public health, safety, or welfare will not be endangered during the appeal; and

(B) a bond of \$100,000 is posted.

[[f)] **(l) Penalty.**

345 [(1)] A person has committed a class A violation if the person:

346 (A) violates any provision of this Section [subsection (b)]; or

347 (B) submits fraudulent information in support of a license  
348 application under this Section.

349 [(2)] A person has committed a class B violation if the person:

350 (A) violates any provision of subsection (c); or

351 (B) submits fraudulent information in support of registration  
352 under this Section.]

353 **Sec. 2. Emergency Effective Date.**

354 The Council declares that an emergency exists and that this legislation is  
355 necessary for the immediate protection of the public health and safety. This act takes  
356 effect on the date on which it becomes law.

357 *Approved:*

358 /S/ July 25, 2001

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Blair G. Ewing, President, County Council Date

359 *Approved:*

360 /S/ August 1, 2001

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Douglas M. Duncan, County Executive Date

361 *This is a correct copy of Council action.*

362 /S/ August 2, 2001

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Mary A. Edgar, CMC, Clerk of the Council Date